

additional tax shown on the amended return, so called, filed after the due date of the return is a deficiency.

(2) *Other taxes.* In the case of any tax other than an income, estate, gift or chapter 41, 42, 43, or 44 tax, an underpayment for purposes of section 6653 and this section is the amount by which the tax imposed exceeds—

(i) In the case of any tax with respect to which the taxpayer is required to file a return, the sum of (a) the amount shown as tax by the taxpayer upon his return filed in respect of such tax, but only if the return is filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, plus (b) any amount not shown on a return filed by the taxpayer which is paid in respect of such tax prior to the date prescribed for filing the return. The “amount shown as tax by the taxpayer upon his return” for the purposes of this subparagraph shall be determined without regard to any credit for an overpayment for any prior tax return period, and without regard to any adjustment made under section 6205(a), or section 6413(a), relating to special rules applicable to certain employment taxes.

(ii) In the case of any tax payable by stamp, the amount paid (on or before the date prescribed for payment) in respect of such tax.

The amounts specified in subdivisions (i) and (ii) of this subparagraph shall be reduced, for purposes of determining the amount of the underpayment, by the amount of any rebates made. For purposes of this subparagraph, the term “rebates” means so much of an abatement, credit, refund, or other repayment as was made on the ground that the tax imposed was less than the excess of the amount specified in subdivision (i) or (ii) of this subparagraph, whichever is applicable, over any rebates previously made.

(d) *No delinquency penalty if fraud assessed.* See paragraph (b)(2) of this section.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671(b)) who willfully fails to pay any tax payable by stamp, coupons, tickets, books or other devices or methods prescribed by the Code or regulations promulgated thereunder, or willfully attempts in

any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

(f) *Joint returns.* No person filing a joint return shall be held liable for a fraud penalty except for his own personal fraudulent conduct. Thus, for the fraud penalty to apply to a taxpayer who files a joint return some part of the underpayment in such return must be due to the fraud of such taxpayer. A taxpayer shall not be subject to the fraud penalty solely by reason of the fraud of a spouse and his filing of a joint return with such spouse.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7320, 39 FR 28279, Aug. 6, 1974; 39 FR 29353, Aug. 15, 1974; T.D. 7838, 47 FR 44252, Oct. 7, 1982]

§ 301.6654-1 Failure by individual to pay estimated income tax.

For regulations under section 6654, see §§ 1.6654-1 to 1.6654-5, inclusive, of this chapter (Income Tax Regulations).

[T.D. 7282, 38 FR 19029, July 19, 1973]

§ 301.6655-1 Failure by corporation to pay estimated income tax.

(a) For regulations under section 6655, see §§ 1.6655-1 through 1.6655-7 of this chapter.

(b) *Effective/applicability date:* This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44366, Aug. 7, 2007]

§ 301.6656-1 Abatement of penalty.

(a) *Exception for first time depositors of employment taxes—*(1) *Waiver.* The Secretary will generally waive the penalty imposed by section 6656(a) on a person's failure to deposit any employment tax under subtitle C of the Internal Revenue Code if—

(i) The failure is inadvertent;

(ii) The person meets the requirements referred to in section 7430(c)(4)(A)(ii) (relating to the net worth requirements applicable for awards of attorney's fees);

(iii) The failure occurs during the first quarter that the person is required to deposit any employment tax; and